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10/565,033	01/17/2006	Ebo Jacques De Muinck	S142.12-0001	7154

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WESTMAN CHAMPLIN & KELLY, P.A.  
SUITE 1400  
900 SECOND AVENUE SOUTH  
MINNEAPOLIS, MN 55402

EXAMINER
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HICKS, ROBERT J

ART UNIT	PAPER NUMBER
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3781

MAIL DATE	DELIVERY MODE
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12/18/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/565,033	<b>Applicant(s)</b> DE MUINCK, EBO JACQUES	
	<b>Examiner</b> ROBERT J. HICKS	<b>Art Unit</b> 3781	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 25 November 2009.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-7 and 10-18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-7 and 10-18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 17 January 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948)                        | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Continued Examination under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on November 25, 2009 has been entered.

### ***Claim Objections***

2. Claims 11-13 are objected to because of the following informalities. These claims depend from claim 9; however, claim 9 was cancelled by the applicant. For purposes of this office action, claims 11-13 will depend from independent claim 1. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.

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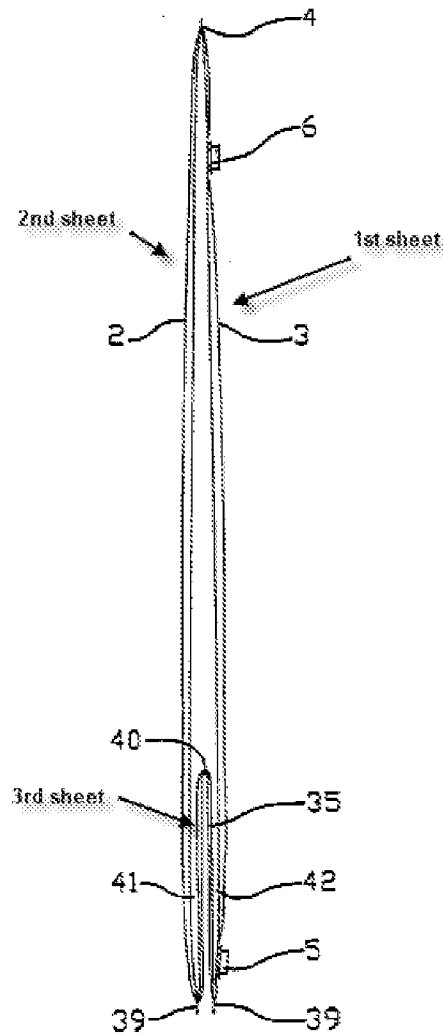
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

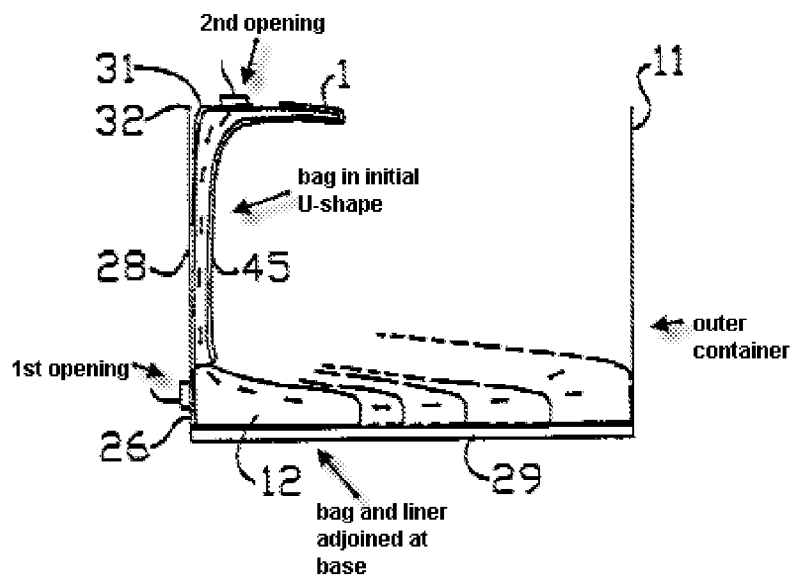
**5. Claims 1, 2, 7, 10-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Olson (6,032,818) in view of Aoyama (GB 2,117,736).**

Regarding Amended Claims 1 and 14, plus claim 18, the patent to Olson – a liner and container combination – discloses a method for using plus a container (11) and an empty bag (1) that can be unfolded from a flat state to a filled final state (Figs. 9a and 9f); wherein the container has a walled enclosure, a base, and a peripheral wall to define a container chamber; wherein the bag comprises a first, second, third, and fourth wall; wherein the first sheet is joined to the second sheet via the third and fourth sheet; wherein, the third and fourth sheet are folded along a fold line (Fig. 3); wherein, in the flat state the fold lines of the third and fourth sheet are between the first and second sheet facing one another; and the first sheet has a first opening (5) for emptying the bag, and the first sheet has a second opening (6) for filling the bag; with the dimensions of the filled bag as being the same as the dimensions of the container (Fig. 9f), wherein the flat empty bag (1) is first fixed by the first and second fixing (26, 31, Col. 5 Lines 26-38) against the walled enclosure of the container chamber and only then is the bag filled with a filling via the second opening (6, Col. 5 Lines 40-43), and wherein the bag is folded along an upper axis and a lower axis to define a U shape (Fig. 9a), with a bottom section of the bag that adjoins a base end of the channel and is configured to flap open around the lower axis and expand as it collects a first portion of liquid received in the bag (Figs. 9b-9d). In the initial state (**Olson**, Fig. 9a), the bag is formed in a U-shape.

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The bag opens at the bottom as liquid is then poured into the bag, which expands the bag to the full shape (**Olson**, Fig. 9f).

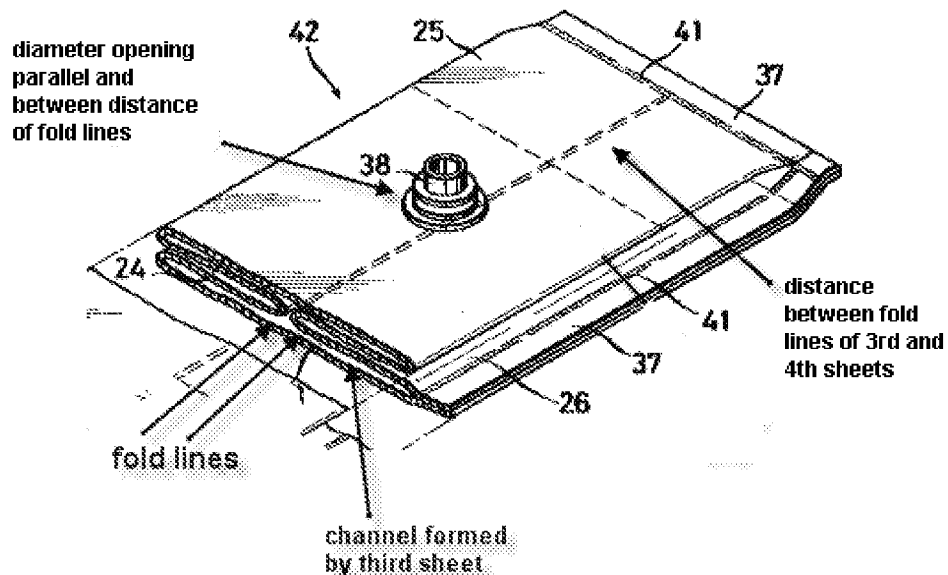




Olson does not expressly disclose the other features of amended claims 1 and 14, nor claim 18. However, the publication to Aoyama – a bag-in-box container – discloses an inner bag (**Aoyama**, 42, Fig. 3) which contains four sheets for walls (**Aoyama**, 23-26), with fold lines (**Aoyama**, 19-22) that extend up from the bottom to the top along the height of the container (**Aoyama**, Fig. 6), and wherein the fold lines of the third sheet and the fourth sheet in the initial state extend underneath the first opening to form a channel between the first and second sheet past the first opening (**Aoyama**, Fig. 6); and wherein the fold line of the third sheet and the fold line of the fourth sheet in the initial state are separated from each other by a distance such that a majority of the diameter of the first opening lies between the fold line of the third sheet and the fold line of the fourth sheet in the initial state (**Aoyama**, Fig. 6). The fold lines of the opposite side walls are underneath the opening of the bag in the collapsed for initial state. In addition, the opening is located in the center of the bag, and the diameter of the opening runs parallel and in between the fold the lines of the third and fourth sheet, in the initial

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or folded state (**Aoyama**, Fig. 6). It would have been obvious at the time of the invention to one of ordinary skill, using the teaching, suggestion, and motivation within the prior art, to modify the inner bag in the Olson combination container to have a fourth sheet forming a fourth wall for the inner bag and to have fold lines which extend up from the bottom to the top along the height of the container, plus to have the diameter of the opening of the bag run parallel and in between the third and fourth sheet fold lines, as suggested by Aoyama, "to thereby expand into a rectangular parallel piped shape to fit into the inside of said outer box when filled with liquid, and being folded flat when empty." (**Aoyama**, Page 1 Lines 34-35).



Regarding Claim 2, Olson in view of Aoyama discloses all the limitations substantially as claimed, as applied to amended claim 1 above; further, Olson teaches the container chamber is block-shaped (**Olson**, Fig. 9a).

Regarding Claim 7, Olson in view of Aoyama discloses all the limitations substantially as claimed, as applied to amended claim 1 above; further, Olson teaches the walled enclosure (**Olson**, 11) has a ceiling that delimits the container chamber (**Olson**, Fig. 9f) wherein a portion of the bag facing upwards in the filled state contains the second opening (**Olson**, 6).

Regarding Claim 10, Olson in view of Aoyama discloses all the limitations substantially as claimed, as applied to amended claim 7 above; further, Aoyama teaches the first opening (**Aoyama**, 38) is close to the longitudinal center line of the first sheet; wherein the fold lines in the third and fourth sheet (**Aoyama**, 39 and 40) extend parallel to and close to the center line (**Aoyama**, Fig. 6).

Regarding Claim 11, Olson in view of Aoyama discloses all the limitations substantially as claimed, as applied to amended claim 1 above; further, Aoyama teaches the distance between the fold line in the third and fourth sheet in the initial state is less than 80% of the diameter of the opening (**Aoyama**, Fig. 6).

Regarding Claims 12 and 13, Olson in view of Aoyama discloses all the limitations substantially as claimed, as applied to amended claim 1 above; further, Aoyama teaches the greatest distance to the periphery of the opening of the first opening is at least 5% of the maximum passage width of said opening, viewed transversely to the fold line of the third and fourth sheets (**Aoyama**, Fig. 6).

Regarding Claims 15 and 16, Olson in view of Aoyama discloses all the limitations substantially as claimed, as applied to amended claim 14 above; further,



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Olson teaches a method wherein the bag is emptied via the first opening (**Olson**, 5, Col. 5 Lines 58-60).

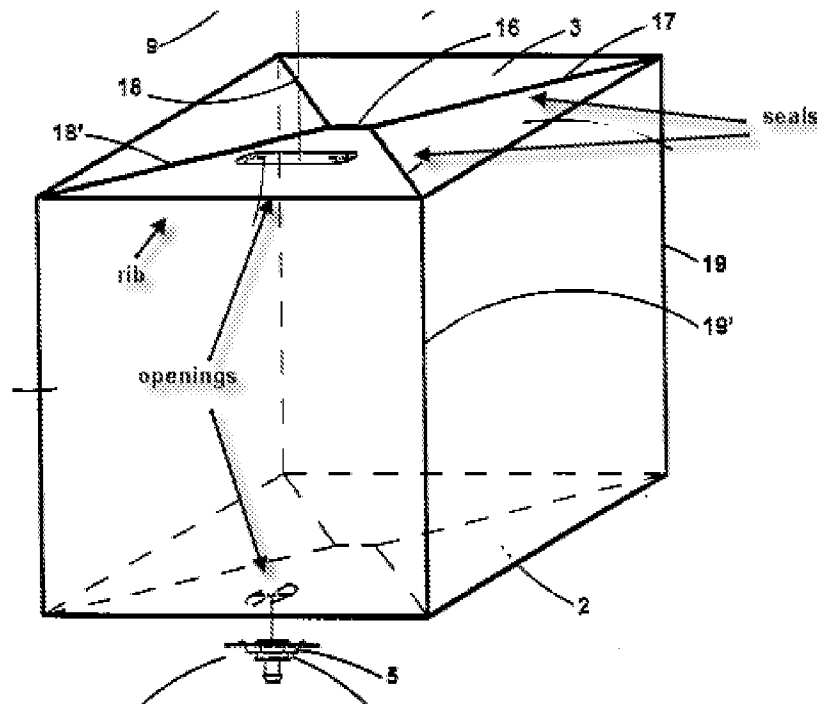
Regarding Claim 17, Olson in view of Aoyama discloses all the limitations substantially as claimed, as applied to amended claim 1 above; further, Olson discloses the first opening and second opening (**Olson**, 5 and 6) are fixed to the walled enclosure by means that include connection stubs and retaining members (**Olson**, 26, 31, Col. 5 Lines 26-41). The openings are held in place by the container holes or clamps.

**6. Claims 3-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Olson in view of Aoyama as applied to claim 2 above, and further in view of Vallot (5,988,422).**

Regarding Amended Claim 3, Olson in view of Aoyama discloses all the limitations substantially as claimed, as applied to claim 2 above. Although Aoyama teaches the first and second sheets have mutually parallel edges (**Aoyama**, Fig. 6) and that the sheets are connected along the tops and bottoms, the Olson and Aoyama combination does not expressly disclose the remaining claimed features of claim 3. However, the patent to Vallot – a container with openings – discloses a flexible liner (**Vallot**, 1) that can be placed into another container (**Vallot**, Col. 4 Lines 10-23), in which the liner has with four side walls that are connected along the tops along an oblique seal (**Vallot**, 17, 18) to determine the diagonals of the bottom and top surface of the bag (**Vallot**, Fig. 1). The welds are the seals, which help determine the diagonals on the top and bottom of the flexible liner. It would have been obvious at the time of the invention to one of ordinary skill, using the teaching, suggestion, and motivation within

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the prior art, to modify the top and bottom of the inner bag in the Olson and Aoyama combination container to have connections along the top and bottom with oblique seals to locate the diagonals of the bag, as suggested by Vallot, as "flat fabrication produces welds and sachets of great strength, even during transportation over long distances." (**Vallot**, Col. 6 Lines 65-67).



Regarding Amended Claim 4, Olson in view of Aoyama in view of Vallot discloses all the limitations substantially as claimed, as applied to claim 3 above; further, Vallot teaches the upper and lower axes run between the outward pointing ends of the top and bottom oblique seals of the first sheet (**Vallot**, Fig. 1). Olson in view of Aoyama in view of Vallot discloses the claimed invention except for the locations of the openings at the upper and lower axes. It would have been obvious to one having ordinary skill in the art at the time the invention was made to locate the top and bottom

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openings near the location of the ribs/axes on the container, since it has been held that rearranging parts of an invention involves only routine skill in the art, and the location of the openings would not affect the utility of the invention as the openings allow for mounting of dispensing and filling devices (**Vallot**, Col. 4 Lines 1-7, and Lines 10-14).

See *In re Japikse*, 86 USPQ 70.

Regarding Amended Claims 5 and 6, Olson in view of Aoyama in view of Vallot discloses all the limitations substantially as claimed, as applied to amended claim 3 above; further, Vallot teaches the distances from the first and second openings to the respective lower and upper axes are at most 25% of the depth of the container chamber, wherein said distance at most 15% of said depth (**Vallot**, Fig. 1).

### ***Response to Arguments***

7. Applicant's arguments filed November 25, 2009 have been fully considered but they are not persuasive.

8. In response to applicant's argument that the Olson and Aoyama references fail to show certain features of applicant's invention regarding amended claims 1 and 14 {**Remarks**, Page 9 Lines 16-21}, see Paragraph 5 to see how Olson in view of Aoyama meets the claim limitations regarding amended claims 1 and 14, plus claim 18.

9. In response to applicant's arguments against the references individually {**Remarks**, Page 9 Line 22 to Page 10 Line 18}, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981), and *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). The applicant argues

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about each individual reference; however, the features of Aoyama, in modifying the container system of Olson, will not affect the utility of the Olson patent to fill and dispense product from the inner container, while encompassed by the outer container.

10. In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning {**Remarks**, Page 11 Lines 1-5, and Page 12 Lines 14-20}, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971). Olson, Aoyama, and Vallot are all references that disclose an inner flexible container with openings for pouring and dispensing product, with the inner container encompassed by an outer container.

11. In response to applicant's argument that Vallot is nonanalogous art {**Remarks**, Page 11 Lines 14-20}, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, Vallot is from the same art as Olson and Aoyama, as Vallot is an inner flexible container that expands when filled, and in which the inner container fits inside an outer container (**Vallot**, Col. 4 Lines 10-23).

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12. In response to applicant's argument that the Aoyama reference fails to show certain features of applicant's invention {**Remarks**, Page 14 Lines 9-13}, see Paragraph 5 of this office action to see how Aoyama meets the claim limitations regarding the diameter of the opening and the fold lines of the third and fourth sheets on the liner in the Olson and Aoyama combination.

### ***Conclusion***

13. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure: see PTO-892 Notice of References Cited.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ROBERT J. HICKS whose telephone number is (571)270-1893. The examiner can normally be reached on Monday-Friday, 8:30 AM - 5:00 PM, EST. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony Stashick can be reached on (571) 272-4561. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Robert J Hicks/  
Examiner, Art Unit 3781

/Anthony Stashick/  
Supervisory Patent Examiner, Art  
Unit 3781